

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUFFOLK COUNTY WATER AUTHORITY,

Plaintiff,

v.

THE DOW CHEMICAL COMPANY, FERRO CORPORATION, VULCAN MATERIALS COMPANY, PROCTER & GAMBLE COMPANY, SHELL OIL COMPANY, individually and doing business as SHELL CHEMICAL LP,

Defendants.

THE DOW CHEMICAL COMPANY, FERRO CORPORATION, and VULCAN MATERIALS COMPANY,

Third-Party Plaintiffs,

v.

120MARCUS REALTY LLC, 5 CUBA HILL OWNER LLC, 550 LIBERTY PLAZA LLC, AIRPORT PLAZA, LLC, ANTHONY ANTONIOU, ANWAR CHITAYAT AS TRUSTEE OF THE ANWAR CHITAYAT ENVIRONMENTAL TRUST, CRESCENT GROUP REALTY INC., EMPIRE PROPERTIES LI LLC, FED 717-725 LLC, FGG REALTY ASSOCIATES, LLC, GSM 717-725 LLC, ICA 717-725 LLC, MAKO PROPERTIES, LLC, OMEGA MELVILLE LLC, ONE ADAMS OWNER LLC, SAF 717-725 LLC, STEEL FOREST, LLC, THE SUFFOLK COUNTY LANDBANK CORPORATION, TOWN OF BABYLON, and TOWN OF ISLIP,

Third-Party Defendants.

THIRD-PARTY COMPLAINT

Case No.: 2:17-cv-06980-NG-RLM

Defendants/Third-Party Plaintiffs The Dow Chemical Company (“Dow”), Ferro Corporation (“Ferro”), and Legacy Vulcan, LLC (formerly known as Vulcan Materials

Company) (“Vulcan”) (collectively, “Third-Party Plaintiffs”), by and through their attorneys, for their Third-Party Complaint against 120Marcus Realty LLC (“120Marcus”), 5 Cuba Hill Owner LLC (“5 Cuba”), 550 Liberty Plaza LLC (“550 Liberty”), Airport Plaza, LLC (“Airport Plaza”), Anthony Antoniou, Anwar Chitayat as Trustee of the Anwar Chitayat Environmental Trust (“Anwar Chitayat Trust”), Crescent Group Realty Inc. (“Crescent Group Realty”), Empire Properties LI LLC (“Empire Properties”), FED 717-725 LLC, FGG Realty Associates, LLC (“FGG Realty”), GSM 717-725 LLC, ICA 717-725 LLC, Mako Properties, LLC (“Mako”), Omega Melville LLC (“Omega”), One Adams Owner LLC (“One Adams”), SAF 717-725 LLC, Steel Forest, LLC (“Steel Forest”), The Suffolk County Landbank Corporation (“Suffolk County Landbank”), the Town of Babylon, and the Town of Islip (collectively, “Third-Party Defendants”), allege:

PARTIES

1. Suffolk County Water Authority (“SCWA”) is a public benefit corporation and public drinking water provider. It claims to service approximately 1.2 million customers in Suffolk County, New York through municipal supply wells that draw from the Long Island Aquifer System.
2. Dow is a Delaware corporation with its principal office in Midland, Michigan.
3. Ferro is an Ohio corporation with its principal office in Mayfield Heights, Ohio.
4. Vulcan is a Delaware limited liability company with its principal office in Birmingham, Alabama.
5. 120Marcus is a New York limited liability company.

6. 5 Cuba is a Delaware limited liability company.
7. 550 Liberty is a New York limited liability company.
8. Airport Plaza is a Delaware limited liability company.
9. Anthony Antoniou is an individual in Lindenhurst, New York.
10. Anwar Chitayat is the trustee of the Anwar Chitayat Trust, with an address in Delray Beach, Florida.

11. Crescent Group Realty is a New York corporation.
12. Empire Properties is a New York limited liability company.
13. FED 717-725 LLC, GSM 717-725 LLC, ICA 717-725 LLC, and SAF 717-725 LLC (the “717-725 LLCs”) are Delaware limited liability companies.
14. FGG Realty is a New York limited liability company.
15. Mako is a New York limited liability company.
16. Omega is a New York limited liability company.
17. One Adams is a New York limited liability company.
18. Steel Forest is a Delaware limited liability company.
19. Suffolk County Landbank is an entity organized under the New York Land Bank Act, Article 16 of the New York Not-for-Profit Corporation Law.

20. The Town of Babylon is a New York municipal corporation.
21. The Town of Islip is a New York municipal corporation.

JURISDICTION AND VENUE

22. This Court has jurisdiction pursuant to 28 U.S.C. § 1337(a).

23. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the alleged events or omissions giving rise to this case occurred in the Eastern District of New York.

CONTRIBUTION CLAIM

24. On November 30, 2017, SCWA commenced this action against Dow, Ferro, Vulcan, The Proctor & Gamble Company, and Shell Oil Company. Its Complaint is attached as Exhibit A, and is incorporated herein without conceding the truth of its allegations. (Dkt. No. 1.)

25. SCWA alleges that Dow, Vulcan, and Ferro manufactured and sold 1,4-dioxane and/or unspecified 1,1,1-trichloroethane (TCA) products that also contained 1,4-dioxane. (*Id.* ¶¶ 11-13.)

26. These TCA products, according to the Complaint, were “released at various locations, at various times, and in various amounts onto the lands and/or water in the vicinity of Plaintiff’s drinking water production wells.” (*Id.* ¶ 53.)

27. According to the Complaint, 1,4-dioxane is a constituent of TCA, and TCA releases into the environment “necessarily” include the release of 1,4-dioxane “into the environment.” (*Id.* ¶¶ 12, 29.)

28. The Complaint also alleges these releases of TCA are a “major source” of existing and threatened 1,4-dioxane contamination in SCWA’s supply wells. (*Id.* ¶¶ 34, 35.)

29. More specifically, SCWA claims that because of “1,4 dioxane’s high mobility and persistence in soil and groundwater,” past releases of TCA or other “products containing 1,4-dioxane” are a continuing source of 1,4-dioxane contamination in SCWA’s wells. (*Id.* ¶¶ 3, 34)

30. County records show 120Marcus' ownership of property located at 120 Marcus Boulevard, Deer Park, New York 11729, which is located in an area of documented contamination that government agencies refer to as the "SMS Instruments Site."

31. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the SMS Instruments Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

32. County records show 5 Cuba's ownership of property located at 5 Cuba Hill Road, Greenlawn, New York 11740, which is located in an area of documented contamination that government agencies refer to as the "Hazeltine Site."

33. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Hazeltine Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

34. County records show 550 Liberty's ownership of property located at 550 Suffolk Avenue, Brentwood, New York 11717, which is located in an area of documented contamination that government agencies refer to as the "Liberty Industrial Finishing Site."

35. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Liberty Industrial Finishing Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

36. County records show the 717-725 LLCs' ownership of properties located at 717 and 725 Broadway Avenue, Holbrook, New York 11741, which are located in an area of documented contamination that government agencies refer to as the "Goldisc Recording Site."

37. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Goldisc Recording Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

38. County records show Airport Plaza's ownership of property located at 1000 Conklin Street, Farmingdale, New York 11735, which is located in an area of documented contamination that government agencies refer to as the "Fairchild Republic Site."

39. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Fairchild Republic Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

40. County records show Anthony Antoniou's ownership of property located at 666 Albany Avenue, North Amityville, New York 11701, which is located in an area of documented contamination that government agencies refer to as the "AMW Materials Site."

41. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the AMW Materials Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

42. County records show Anwar Chitayat Trust's ownership of property located at 100 Oser Avenue, Hauppauge, New York 11788, which is located in an area of documented contamination that government agencies refer to as the "100 Oser Site."

43. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the 100 Oser Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

44. County records show Crescent Group Realty's ownership of property located at 1305 South Strong Avenue, Copiague, New York 11726, which is located in an area of documented contamination that government agencies refer to as the "Levey Property Site."

45. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Levey Property Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

46. County records show Empire Properties' ownership of property located at 50 Dale Street, West Babylon, New York 11704, which is located in an area of documented contamination that government agencies refer to as the "Spectrum Finishing Site."

47. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Spectrum Finishing Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

48. County records show FGG Realty's ownership of property located at 82 Milbar Boulevard, Farmingdale, New York 11735, which is located in an area of documented contamination that government agencies refer to as the "Circuitron Site."

49. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Circuitron Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

50. County records show Mako's ownership of properties located at 48-50 Enter Lane, Islandia, New York 11749, which is located in an area of documented contamination that government agencies refer to as the "48-50 Enter Lane Site."

51. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the 48-50 Enter Lane Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

52. County records show Omega's ownership of property located at 25 Melville Park Road, Melville, New York 11747, which is located in an area of documented contamination that government agencies refer to as the "New York Twist Drill Site."

53. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the New York Twist Drill Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

54. County records show One Adams' ownership of property located at One Adams Boulevard, Farmingdale, NY 11735, which is located in an area of documented contamination that government agencies refer to as the "National Heatset Site."

55. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the National Heatset Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

56. County records show Steel Forest's ownership of property located at 500 Commack Road, Commack, NY 11725, which is located in an area of documented contamination that government agencies refer to as the "Forest Laboratories Site."

57. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Forest Laboratories Site. According to SCWA's allegations, 1,4-dioxane is a constituent of TCA, and was "necessarily" released with this TCA. (*Id.* ¶ 29.)

58. County records show Suffolk County Landbank's ownership of property located on Old Northport Road, Kings Park, New York 11754, which is located in an area of documented contamination that government agencies refer to as the "Steck & Philbin Site."

59. Publicly available reports confirm government investigations have detected 1,4-dioxane in the soil and/or groundwater at the Steck & Philbin Site.

60. County records show Town of Babylon's ownership of a landfill property located on Gleam Street, West Babylon, New York 11704, which is located in an area of documented contamination that government agencies refer to as the "Babylon Landfill Site."

61. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Babylon Landfill Site. According to SCWA’s allegations, 1,4-dioxane is a constituent of TCA, and was “necessarily” released with this TCA. (*Id.* ¶ 29.)

62. County records show Town of Islip’s ownership of a landfill property located on Udall Road, Brentwood, New York 11717, which is located in an area of documented contamination that government agencies refer to as the “Sonia Road Landfill Site.”

63. Publicly available reports confirm government investigations have detected TCA in the soil and/or groundwater at the Sonia Road Landfill Site. According to SCWA’s allegations, 1,4-dioxane is a constituent of TCA, and was “necessarily” released with this TCA. (*Id.* ¶ 29.)

64. The SMS Instruments Site, Hazeltine Site, Liberty Industrial Finishing Site, Goldisc Recording Site, Fairchild Republic Site, AMW Materials Site, 100 Oser Site, Levey Property Site, Spectrum Finishing Site, Circuitron Site, 48-50 Enter Lane Site, New York Twist Drill Site, National Heatset Site, Forest Laboratories Site, Steck & Philbin Site, Babylon Landfill Site, and Sonia Road Landfill Site (collectively, the “Sites”) are located “in the vicinity of Plaintiff’s drinking water production wells.” (*Id.* ¶ 53.)

65. SCWA’s operation of its production wells draws groundwater (and any associated contaminants) from the Sites into SCWA’s wells.

66. As the owners of the Sites where 1,4-dioxane and/or TCA have been detected, Third-Party Defendants knew or should have known of the existence of 1,4-dioxane contamination on their properties, and had a reasonable opportunity to abate the migration of the contamination.

67. Third-Party Defendants have a duty to abate the migration of 1,4-dioxane from their properties, and otherwise prevent contaminants that exist on their properties from causing the damage, nuisance, or trespass for which SCWA has sued Dow, Vulcan, and Ferro. (*Id.* ¶¶ 69-77, 87-97.)

68. While continuing to deny liability, if Dow, Vulcan, and/or Ferro are found liable for damage to SCWA's wells, then they are entitled to a judgment of contribution against Third-Party Defendants for all or part of any liability associated with such a finding because Third-Party Defendants' acts and omissions, including their failure to properly abate the presence and migration of 1,4-dioxane at the Sites, are, to the extent SCWA is able to successfully prove its allegations, the direct and proximate cause of the nuisance SCWA alleges in its Complaint.

69. While continuing to deny liability, if Dow, Vulcan, and/or Ferro are found liable for damage to SCWA's wells, then they are entitled to a judgment of contribution against Third-Party Defendants for all or part of any liability associated with such a finding because Third-Party Defendants' negligent acts and omissions, including their failure to properly abate the presence and migration of 1,4-dioxane at the Sites, are, to the extent SCWA is able to successfully prove its allegations, the direct and proximate cause of the damages SCWA alleges in its Complaint.

70. While continuing to deny liability, if Dow, Vulcan, and/or Ferro are found liable for damage to SCWA's wells, then they are entitled to a judgment of contribution against Third-Party Defendants for all or part of any liability associated with such a finding because Third-Party Defendants' intentional acts and omissions, including their failure to properly abate the presence and migration of 1,4-dioxane at the Sites, are, to the extent SCWA is able to

successfully prove its allegations, the direct and proximate cause of the continuing unauthorized intrusion and continuing trespass SCWA alleges in its Complaint.

71. Article 14 of the New York Civil Practice Law and Rules permits tortfeasors liable for damages for the same injuries to the Plaintiff to claim contribution against each other, even when the Plaintiff has not sued one or more of those tortfeasors.

WHEREFORE, Defendants/Third-Party Plaintiffs demand judgment against Third-Party Defendants, awarding Defendants/Third-Party Plaintiffs:

1. Damages in an amount to be determined at trial, representing contribution for the portion of any judgment obtained by Plaintiff against Defendants/Third-Party Plaintiffs determined to be the liability of Third-Party Defendants; and
2. Such other relief the Court deems just and equitable.

Dated: August 30, 2021

/s/ Joel A. Blanchet

Joel A. Blanchet
Andrew P. Devine
PHILLIPS LYTLE LLP
One Canalside
125 Main Street
Buffalo, NY 14203
Phone: (716) 847-8400
jblanchet@phillipslytle.com
adevine@phillipslytle.com

*Counsel for Defendant/Third-Party Plaintiff
The Dow Chemical Company*

/s/ Robb W. Patryk

Robb W. Patryk
Faranak Sharon Tabatabai Asl
Amina Hassan
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004
Phone: (212) 837-6000
robb.patryk@hugheshubbard.com
fara.tabatabai@hugheshubbard.com
amina.hassan@hugheshubbard.com

*Counsel for Defendant/Third-Party Plaintiff
Ferro Corporation*

/s/ Felice B. Galant

Stephen C. Dillard (*pro hac*)
NORTON ROSE FULBRIGHT US LLP
1301 McKinney, Suite 5100
Houston, TX 77010
Phone: (713) 651-5151
steve.dillard@nortonrosefulbright.com

Felice B. Galant
NORTON ROSE FULBRIGHT US LLP
1301 Avenue of the Americas
New York, NY 10019
Phone: (212) 318-3000
felice.galant@nortonrosefulbright.com

*Counsel for Defendant/Third-Party Plaintiff
Legacy Vulcan, LLC, formerly known as Vulcan
Materials Company*

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